

West's Louisiana Statutes Annotated
Louisiana Code of Criminal Procedure (Refs & Annos)
Title XXXI-a. Post Conviction Relief (Refs & Annos)

LSA-C.Cr.P. Art. 924

Art. 924. Definitions

[Currentness](#)

As used in this Title:

(1) An “application for post conviction relief” means a petition filed by a person in custody after sentence following conviction for the commission of an offense seeking to have the conviction and sentence set aside.

(2) “Custody” means detention or confinement, or probation or parole supervision, after sentence following conviction for the commission of an offense.

(3) “DNA testing” means any method of testing and comparing deoxyribonucleic acid that would be admissible under the Louisiana Code of Evidence.

(4) “Unknown sample” means a biological sample from an unknown donor constituting evidence of the commission of an offense or tending to prove the identity of the perpetrator of an offense.

Credits

Added by Acts 1980, No. 429, § 1, eff. Jan. 1, 1981. Amended by [Acts 2001, No. 1020, § 1](#).

Editors' Notes

OFFICIAL REVISION COMMENT--1980

This article defines the application for post conviction relief in terms which distinguish it from an application for a writ of habeas corpus applying for pre-conviction relief.

Although the availability of post conviction relief is dependent upon the petitioner being in “custody”, the term is broadly defined to include conditional liberty such as probation or parole.

[Notes of Decisions \(73\)](#)

LSA-C.Cr.P. Art. 924, LA C.Cr.P. Art. 924
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Louisiana Code of Criminal Procedure (Refs & Annos)
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LSA-C.Cr.P. Art. 924.1

Art. 924.1. Effect of appeal

[Currentness](#)

An application for post conviction relief shall not be entertained if the petitioner may appeal the conviction and sentence which he seeks to challenge, or if an appeal is pending.

Credits

Added by Acts 1980, No. 429, § 1, eff. Jan. 1, 1981.

Editors' Notes

OFFICIAL REVISION COMMENT--1980

This article reaffirms the post appellate nature of the procedure. Post conviction relief is not designed to take the place of an appeal. The petitioner must first exhaust whatever appellate rights he has.

[Notes of Decisions \(17\)](#)

LSA-C.Cr.P. Art. 924.1, LA C.Cr.P. Art. 924.1
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LSA-C.Cr.P. Art. 925

Art. 925. Venue

[Currentness](#)

Applications for post conviction relief shall be filed in the parish in which the petitioner was convicted.

Credits

Added by Acts 1980, No. 429, § 1, eff. Jan. 1, 1981.

Editors' Notes

OFFICIAL REVISION COMMENT--1980

The venue for post conviction petitions is logically in the parish of conviction. This charge was first adopted in the 1966 Code of Criminal Procedure. Witnesses and other evidence to support or contradict the petitioner's claims are most likely found in that parish.

Section 5 of Acts 1980, No. 429 (enacting this Title) explicitly provides that the enactment of the new articles governing post conviction procedure are to have no effect on venue for suits by prisoners committed to the custody of the Department of Corrections contesting the computation of their sentence or their parole, discharge, or good time dates. Such suits must continue to be filed in the parish of East Baton Rouge pursuant to R.S. 15:572.15.

Pre-conviction habeas corpus writs are filed in the parish where the accused is held in custody. See [C.Cr.P. Art. 352](#).

[Notes of Decisions \(5\)](#)

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LSA-C.Cr.P. Art. 926

Art. 926. Petition

[Currentness](#)

A. An application for post conviction relief shall be by written petition addressed to the district court for the parish in which the petitioner was convicted. A copy of the judgment of conviction and sentence shall be annexed to the petition, or the petition shall allege that a copy has been demanded and refused.

B. The petition shall allege:

(1) The name of the person in custody and the place of custody, if known, or if not known, a statement to that effect;

(2) The name of the custodian, if known, or if not known, a designation or description of him as far as possible;

(3) A statement of the grounds upon which relief is sought, specifying with reasonable particularity the factual basis for such relief;

(4) A statement of all prior applications for writs of habeas corpus or for post conviction relief filed by or on behalf of the person in custody in connection with his present custody; and

(5) All errors known or discoverable by the exercise of due diligence.

C. The application shall be signed by the petitioner and be accompanied by his affidavit that the allegations contained in the petition are true to the best of his information and belief.

D. The petitioner shall use the uniform application for post conviction relief approved by the Supreme Court of Louisiana. If the petitioner fails to use the uniform application, the court may provide the petitioner with the uniform application and require its use.

E. Inexcusable failure of the petitioner to comply with the provisions of this Article may be a basis for dismissal of his application.

Credits

Added by Acts 1980, No. 429, § 1, eff. Jan. 1, 1981.

Editors' Notes

OFFICIAL REVISION COMMENT--1980

The allegations to be contained in the application are similar to those prescribed for the application for a writ of habeas corpus. See [C.Cr.P. Art. 353](#).

Because applications for post conviction relief are often filed by laymen without the aid of an attorney, a uniform application has been adopted by the Supreme Court of Louisiana. See La.Sup.Ct.Rules, Appendix "A". Such uniform applications facilitate the trial court's review of post conviction complaints because the applications follow a "fill in the blanks" format containing spaces for the needed information and directions to the applicant. Copies are available at the various penal institutions in the state. Use of such uniform applications is recommended by the American Bar Association. See ABA Standards, Post Conviction Relief, § 3.2. They are also used by the United States District Courts. See Rule 2, Fed. Rules Governing § 2254 Proceedings.

SUPREME COURT RULE 27

Rule 926D.1. Post-Conviction Proceedings (applicable to La. C.Cr.P. art. 926D).

Section 1. The Uniform Application for Post-Conviction Relief set forth in Appendix A to the Rules of the Louisiana Supreme Court is approved for use pursuant to Article 926D of the Louisiana Code of Criminal Procedure.

Section 2. This rule is effective to all applications filed on or after January 16, 1981.

Adopted Oct. 14, 1976, effective Jan. 1, 1977. Amended and effective Jan. 16, 1981.

Section 3. When a district judge signs a death warrant he shall instruct the clerk of court to notify the district

attorney, counsel of record and this court by delivering in person copies of the warrant or by certified mail, immediately after the signing. Evidence of mailing shall be filed in the record. This rule is in addition to the provisions of [R.S. 15:567](#), and is effective as to all death warrants signed on or after December 1, 1987.

Added Nov. 13, 1987, effective Dec. 1, 1987.

[Notes of Decisions \(5\)](#)

LSA-C.Cr.P. Art. 926, LA C.Cr.P. Art. 926
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LSA-C.Cr.P. Art. 926.1

Art. 926.1. Application for DNA testing

Effective: August 1, 2014

[Currentness](#)

A. (1) Prior to August 31, 2019, a person convicted of a felony may file an application under the provisions of this Article for post-conviction relief requesting DNA testing of an unknown sample secured in relation to the offense for which he was convicted. On or after August 31, 2019, a petitioner may request DNA testing under the rules for filing an application for post-conviction relief as provided in Article 930.4 or 930.8 of this Code.

(2) Notwithstanding the provisions of Subparagraph (1) of this Paragraph, in cases in which the defendant has been sentenced to death prior to August 15, 2001, the application for DNA testing under the provisions of this Article may be filed at any time.

B. An application filed under the provisions of this Article shall comply with the provisions of Article 926 of this Code and shall allege all of the following:

(1) A factual explanation of why there is an articulable doubt, based on competent evidence whether or not introduced at trial, as to the guilt of the petitioner in that DNA testing will resolve the doubt and establish the innocence of the petitioner.

(2) The factual circumstances establishing the timeliness of the application.

(3) The identification of the particular evidence for which DNA testing is sought.

(4) That the applicant is factually innocent of the crime for which he was convicted, in the form of an affidavit signed by the petitioner under penalty of perjury.

C. In addition to any other reason established by legislation or jurisprudence, and whether based on the petition and answer or after contradictory hearing, the court shall dismiss any application filed pursuant to this Article unless it finds all of the following:

(1) There is an articulable doubt based on competent evidence, whether or not introduced at trial, as to the guilt of the petitioner and there is a reasonable likelihood that the requested DNA testing will resolve the doubt and establish the innocence of the petitioner. In making this finding the court shall evaluate and consider the evidentiary importance of the DNA sample to be tested.

(2) The application has been timely filed.

(3) The evidence to be tested is available and in a condition that would permit DNA testing.

D. Relief under this Article shall not be granted when the court finds that there is a substantial question as to the integrity of the evidence to be tested.

E. Relief under this Article shall not be granted solely because there is evidence currently available for DNA testing but the testing was not available or was not done at the time of the conviction.

F. Once an application has been filed and the court determines the location of the evidence sought to be tested, the court shall serve a copy of the application on the district attorney and the law enforcement agency which has possession of the evidence to be tested, including but not limited to sheriffs, the office of state police, local police agencies, and crime laboratories. If the court grants relief under this Article and orders DNA testing the court shall also issue such orders as are appropriate to obtain the necessary samples to be tested and to protect their integrity. The testing shall be conducted by a laboratory mutually agreed upon by the district attorney and the petitioner. If the parties cannot agree, the court shall designate a laboratory to perform the tests which is accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) in forensic DNA analysis.

G. If the court orders the testing performed at a private laboratory, the district attorney shall have the right to withhold a sufficient portion of any unknown sample for purposes of his independent testing. Under such circumstances, the petitioner shall submit DNA samples to the district attorney for purposes of comparison with the unknown sample retained by the district attorney. A laboratory selected to perform the analysis shall, if possible, retain and maintain the integrity of a sufficient portion of the unknown sample for replicate testing. If after initial examination of the evidence, but before actual testing, the laboratory decides that there is insufficient evidentially significant material for replicate tests, then it shall notify the district attorney in writing of its finding. If the petitioner and district attorney cannot agree, the court shall determine which laboratory as required by Paragraph F of this Article is best suited to conduct the testing and shall fashion its order to allow the laboratory conducting the tests to consume the entirety of the unknown sample for testing purposes if necessary.

H. (1) The results of the DNA testing ordered under this Article shall be filed by the laboratory with the court and served upon the petitioner and the district attorney. The court may, in its discretion, order production of the underlying facts or data and laboratory notes.

(2) After service of the application on the district attorney and the law enforcement agency in possession of the evidence, no evidence shall be destroyed that is relevant to a case in which an application for DNA testing has been filed until the case has been finally resolved by the court.

(3) After service of the application on the district attorney and the law enforcement agency in possession of the evidence, the clerks of court of each parish and all law enforcement agencies, including but not limited to district attorneys, sheriffs, the office of state police, local police agencies, and crime laboratories shall preserve until August 31, 2019, all items of evidence in their possession which are known to contain biological material that can be subjected to DNA testing, in all cases that, as of August 15, 2001, have been concluded by a verdict of guilty or a plea of guilty.

(4) In all cases in which the defendant has been sentenced to death prior to August 15, 2001, the clerks of court of each parish and all law enforcement agencies, including but not limited to district attorneys, sheriffs, the office of state police, local police agencies, and crime laboratories shall preserve, until the execution of sentence is completed, all items of evidence in their possession which are known to contain biological material that can be subjected to DNA testing.

(5) Notwithstanding the provisions of Subparagraphs (3) and (4) of this Paragraph, after service of the application on the district attorney and the law enforcement agency in possession of the evidence, the clerks of court of each parish and all law enforcement agencies, including but not limited to district attorneys, sheriffs, the office of state police, local police agencies, and crime laboratories may forward for proper storage and preservation all items of evidence described in Subparagraph (3) of this Paragraph to a laboratory accredited in forensic DNA analysis by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB).

(6) Except in the case of willful or wanton misconduct or gross negligence, no clerk of court or law enforcement officer or law enforcement agency, including but not limited to any district attorney, sheriff, the office of state police, local police agency, or crime laboratory which is responsible for the storage or preservation of any item of evidence in compliance with either the requirements of Subparagraph (3) of this Paragraph or [R.S. 15:621](#) shall be held civilly or criminally liable for the unavailability or deterioration of any such evidence to the extent that adequate or proper testing cannot be performed on the evidence.

I. The DNA profile of the petitioner obtained under this Article shall be sent by the district attorney to the state police for inclusion in the state DNA data base established pursuant to [R.S. 15:605](#). The petitioner may seek removal of his DNA record pursuant to [R.S. 15:614](#).

Art. 926.1. Application for DNA testing, LA C.Cr.P. Art. 926.1

J. The petitioner, in addition to other service requirements, shall mail a copy of the application requesting DNA testing to the Department of Public Safety and Corrections, Correction Services, office of adult services. If the court grants relief under this Article, the court shall mail a copy of the order to the Department of Public Safety and Corrections, Correction Services, office of adult services. The Department of Public Safety and Corrections, Correction Services, office of adult services, shall keep a copy of all records sent to them pursuant to this Subsection and report to the legislature before January 1, 2003, on the number of petitions filed and the number of orders granting relief.

K. There is hereby created in the state treasury a special fund designated as the DNA Testing Post-Conviction Relief for Indigents Fund. The fund shall consist of money specially appropriated by the legislature. No other public money may be used to pay for the DNA testing authorized under the provisions of this Article. The fund shall be administered by the Louisiana Indigent Defense Assistance Board. The fund shall be segregated from all other funds and shall be used exclusively for the purposes established under the provisions of this Article. If the court finds that a petitioner under Article 926.1 of this Code is indigent, the fund shall pay for the testing as authorized in the court order.

Credits

Added by [Acts 2001, No. 1020, § 1](#). Amended by [Acts 2003, No. 823, § 1](#); [Acts 2006, No. 120, § 1](#); [Acts 2008, No. 297, § 1](#); [Acts 2011, No. 250, § 2, eff. July 1, 2011](#); [Acts 2014, No. 266, § 1](#).

[Notes of Decisions \(6\)](#)

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